The opinion in support of the decision being entered today is <u>not</u> binding precedent of the Board.

Paper X21

Filed by: Trial Section Motions Panel

Box Interference

Washington, D.C. 20231 Tel: 703-308-9797 Fax: 703-305-0942 Filed: December 3, 2001

#### UNITED STATES PATENT AND TRADEMARK OFFICE

# BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES

**FAXED** 

GEORGE J. STEPNIEWSKI Junior Party (U.S. Patent 5,648,066) **9€€ 1** 8 2001

PAT. & T.M. OFFICE BOARD OF PATENT APPEALS AND INTERFERENCES

V.

PASCAL ARNAUD AND MYRIAM MELLUL Senior Party, (U.S. Application 09/049,927).

Patent Interference No. 104,751

Before: SCHAFER, TORCZON and TIERNEY, <u>Administrative Patent Judges</u>. TIERNEY, <u>Administrative Patent Judge</u>.

## JUDGMENT AND RECOMMENDATION

(Pursuant to 37 CFR § 1.662(a) and § 1.659(c))

#### I. Judgment

Junior Party Stepniewski has requested adverse judgement as to the invention defined by

Count 1, the sole count in the interference. (Paper No. 17).

#### II. Recommendation

It is recommended that the examiner of Arnaud, U.S. Application 09/049,927 review the Communication (Paper No. 3). As set forth in the Communication, there is a question as to Arnaud's compliance with the written description requirement of 35 U.S.C. § 112, first paragraph for its broadly claimed "non-volatile silicone fluid." Upon a review of the issues raised in the Communication, the examiner should enter any rejection deemed necessary.

Upon consideration of the record, it is:

ORDERED that judgment on priority as to Count 1 (Notice Declaring Interference, Paper No. 1, page 5), the sole count in the interference, is awarded *against* Junior Party Stepniewski.

FURTHER ORDERED that Junior Party Stepniewski is not entitled to a patent containing claims 1-25 of Stepniewski, U.S. Patent 5,648,066.

FURTHER ORDERED that a copy of this final decision shall be placed and given a paper number in the file of Stepniewski, U.S. Patent 5,648,066 and Arnaud et al., U.S. Application 09/049,927.

FURTHER ORDERED that if there is a settlement agreement, attention is directed to 35 U.S.C. § 135(c) and 37 CFR § 1.661.

RECOMMENDED that the examiner review the Communication, Paper No. 3 and make any rejections deemed necessary to ensure Arnaud's compliance with 35 U.S.C. § 112, first paragraph, written description.

RICHARD E. SCHAFER Administrative Patent Judge

**RICHARD TORCZON** 

Administrative Patent Judge

MICHAEL P. TIERNEY Administrative Patent Judge

**BOARD OF PATENT** 

APPEALS .

AND

**INTERFERENCES** 

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